

Supreme Court of the United States

OCTOBER TERM, 1953

No. _____, Original.

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS,
Complainant,

v.

STATE OF LOUISIANA; STATE OF FLORIDA; STATE OF TEXAS;
STATE OF CALIFORNIA; GEORGE M. HUMPHREY; DOUGLAS
McKAY; ROBERT B. ANDERSON; IVY BAKER PRIEST,
Defendants.

REPLY BRIEF FOR COMPLAINANT.

The State of Rhode Island files this reply brief in order to emphasize the critical factors which give it standing to bring this suit because these factors have obviously been misconceived and misunderstood by the defendants in their briefs.

What the complainant states object to is the assertion by the defendant states of power over areas and resources which this Court has declared to be inseparably entwined with national interests, national responsibilities and national concerns. The defendant states, in the words of this Court in *United States v. California*, 332 U.S. 19, 35-36, are "not equipped in our constitutional system with the

powers or the facilities for exercising the responsibilities which would be concomitant with the dominion which [they] seek." And because the defendant states lack the constitutional power to assume jurisdiction over the areas and resources purported to be granted them by Public Law 31, the complainant states as equal or joint members of the Union have standing to object when injury to them results from the exercise of such jurisdiction. They then have standing to insist that the vital functions of the national government, which are functions necessarily exercised in the interests of all the states, not be performed by any one state to the detriment of other states.

It is this concept of illegal assertion of state power over national interests that lies at the heart of the complaints filed by Rhode Island and Alabama. And because the defendants have misunderstood the nature of that concept, this brief is addressed to a necessary elaboration thereof.

1. The Justiciable Nature of the Controversy.

At the outset the Court should take note that most importantly among acts done and threatened to be done by the defendant states against which Rhode Island complains, are acts the same or essentially similar to those acts which this Court held to be unlawful and beyond the legal powers of the defendant states in *United States v. California*, 332 U.S. 19; *United States v. Louisiana*, 339 U.S. 699; and *United States v. Texas*, 339 U.S. 707. This is clearly seen by reference to paragraphs IX, XI, XIII, and XV, and paragraphs XIX, XXI, XXIII and XXV of the Rhode Island complaint.

In the off-shore oil cases referred to, this Court held that complaints of the federal government against the same acts of the defendant states as those against which Rhode Island now complains, raised not abstract or hypothetical political questions, but a concrete conflict of legal rights and interests which presented a case and controversy

appropriate for decision by this Court.¹ And this Court held that the acts complained of gave grounds for injunctive relief and a declaration that the defendant states had no title or property interest in the lands, minerals or other things lying outside of inland waters and seaward of the ordinary low-water mark. These decisions were by a divided Court, but they now represent the law of the land and it may be assumed that they would not be overruled *sub silentio* or without full argument.

It should, moreover, be pointed out that there are additional allegations in the Rhode Island and Alabama complaints that some of the defendant states are claiming seaward boundaries beyond the three-mile limit traditionally asserted by the United States in its international relations to the detriment of the complainant states. These allegations corroborate the essential soundness of the federal government's contention as stated by this Court in the *California* off-shore oil case that "proper exercise of these constitutional responsibilities (of the federal government in the international field) requires that it have power; unencumbered by state commitments, always to determine what agreements will be made concerning the control and use of the marginal seas and the land under it." (332 U.S. 19, 29) As Justice Black stated, "Not only has acquisition, as it were, of the three-mile belt been accomplished by the national government, but protection and control of it has been a function of national external sovereignty. * * *

¹ "The difference involves the conflicting claims of federal and state officials as to which government, state or federal, has a superior right to take or authorize the taking of the vast quantities of oil and gas underneath that land, much of which has already been, and more of which is about to be, taken by or under authority of the state. Such concrete conflicts as these constitute a controversy in the classic legal sense, and are the very kind of differences which can only be settled by agreement, arbitration, force, or judicial action The justiciability of this controversy rests therefore on conflicting claims of alleged invasions of interests in property and on conflicting claims of governmental powers to authorize its use." *United States v. California*, 332 U.S. 19, 25.

What this government does, or even what the states do, anywhere in the ocean, is a subject upon which the nation may enter into and assume treaty or similar obligations. See *United States v. Belmont*, 301 U.S. 324, 331-332. The very oil about which the state and the nation here contend might well become the subject of international dispute and settlement. * * * *The state is not equipped in our constitutional system with the powers or facilities for exercising the responsibilities which would be concomitant with the dominion which it seeks.*" (332 U.S. 19, 34-36) (emphasis added).

But the point which bears emphasis here is the essential similarity between the acts of the defendant states of which Rhode Island complains and those which the federal government complained of in the off-shore oil cases. In the earlier off-shore oil cases the federal government was complaining that the acts of the defendant states infringed the rights of the federal government. In the instant cases Rhode Island and Alabama complain that these same acts also infringe their rights as quasi-sovereign states. These acts constitute an invasion of a field which under the Constitution the states are debarred from entering not only because of the rights of the federal government to occupy the field, but because of the rights of the states *inter sese* to have the field free from the interference of sister states. If these acts of the defendant states created a justiciable issue as to the United States they most certainly create such an issue as to Rhode Island and Alabama. The only difference concerns the standing of these two states to raise this justiciable issue before this Court.

2. The Substantiality of the Controversy.

Thus there is clearly a controversy justiciable in character here. The other points on which the complainants must satisfy the Court to obtain leave to institute the suits are (1) the standing and interest of Rhode Island

and Alabama to bring these suits, and (2) the substantiality of the issues which they raise that these unlawful acts and threats of the defendant states have not been validated and made lawful by any acts within the constitutional authority of the federal government. It is the complainants' contention that under the Constitution not only does the federal government have dominion and control of the submerged land and resources under the marginal seas but that the states themselves are debarred from acting in vital segments of this field. The Constitution defines not only the relations of the states to the federal government, but the relations of the states with one another.

It is the complainants' view that the paramount rights of the federal government in these resources are so intimately bound up with foreign policy and national defense that they constitute a continuing responsibility of the federal government which cannot be abdicated by the federal government and which cannot be taken over by the states in their own right and for their own profit. These paramount rights vitally connected with national defense and foreign policy, even more clearly than some of the rights of the federal government under the commerce and admiralty clauses, are in their nature national and may justly be said to be of such a nature as to require the exclusive jurisdiction and control of the national government. (cf. *Cooley v. Board of Wardens*, 12 How. 299, 318).² The states in joining the Union are assured freedom from the assertion of power by sister states in matters of essential national concern. It is the complainants' view that such provisions as the Congress may make for the development of these resources must conform to the standards laid down by this Court in *Illinois Central RR*

² As this Court said in an analogous situation, a "power definitely assigned by the Constitution to one department can neither be surrendered nor delegated by that department, nor vested by statute in another department or agency." *Williamson v. United States*, 289 U.S. 553, 580. See also *Knickerbocker Ice Co. v. Stewart*, 253 U.S. 149, 164; *Wilkerson v. Rohrer*, 140 U.S. 545, 560.

v. *Illinois*, 146 U.S. 387; *Ashwander v. Tennessee Valley Authority*, 297 U.S. 288; and in *Helvering v. Davis*, 301 U.S. 619. The Congress cannot deliberately abdicate, as it attempted to do in Public Law 31, its fiduciary responsibilities, repudiate the public national interest, and patently violate the principle of equality among states. These constitutional issues certainly are substantial and are not in their nature frivolous. They involve serious questions of state and federal power and tremendous

³ It is clear from Public Law 31 and its legislative history that Congress attempted to give to the states not only bare legal title to the offshore oil resources but also certain constitutional functions of the federal government relative to those resources. Section 3(b) of the law "releases and relinquishes unto said States . . . all right, title, and interest of the United States, if any it has, in and to all said lands, improvements, and natural resources . . ." But Section 3(a) provides that "the right and power to manage, administer, lease, develop, and use the said lands and natural resources all in accordance with applicable State law . . . are hereby . . . recognized, confirmed, established, and vested in and assigned to the respective States . . ." Section 6 recognizes that the rights and powers mentioned in Section 3(a) are in derogation of the federal government's powers under the Constitution, for it purports to provide that " . . . the constitutional purposes of commerce, navigation, national defense, and international affairs . . . shall not be deemed to include . . . the rights of management, administration, leasing, use, and development of the lands and natural resources which are specifically recognized, confirmed, established, and vested in and assigned to the respective States and others by section 3 of this Act."

Moreover, in Report No. 135 of Senate Committee on Interior and Insular Affairs to accompany S. J. Res. 13, 83d Cong., 1st Sess., March 27, 1953, p. 5, it was stated that "The measure also provides that in addition to title and ownership, but distinct from them, the States shall have the right and power to manage, administer, lease, develop, and use such lands and natural resources . . . and whatever rights the Federal Government may have in such management and administration are established in and assigned to the States" (Emphasis added.)

Thus Congress tried to quitclaim to the defendant states not only the federal government's proprietary interests in the submerged lands but also, as an inseparable part thereof, certain constitutional functions of the federal government, involving commerce, navigation, national defense and international affairs.

economic interests in irreplaceable resources, which have been valued in monetary terms alone in the hundreds of billions.

The substantiality of the issues presented by the complaints is further emphasized by the defendants' failure to cite any controlling authority permitting Congress to delegate to particular states the federal government's sovereign functions. Resort is had, instead, to the ordinary rules created pursuant to Article IV, Section 3, of the Constitution, a provision relating to the disposition and regulation of federal property. But not one of the authorities cited in this connection deals with any purported cession of assets which were found to be inseparable parts of national sovereignty and national interests. And not one of these authorities deals with cession of assets to states or other grantees who were "not equipped in our constitutional system with the powers or the facilities for exercising the responsibilities which would be concomitant with the dominion which [they] seek." *United States v. California*, 332 U.S. 19, 35-36.

It is not enough, in other words, to rely on precedents, valid or invalid, dealing with the cession of public lands and other properties in areas clearly within the sovereignty of the several states. We are concerned here with assets which are component parts of the federal sovereignty to such an extent that no unit of government other than the federal government can constitutionally regulate and control them. No statutory declaration to the contrary can change that fact.⁴

⁴ There is also a question whether Public Law 31, apart from any question of constitutionality, is effective by its terms to make lawful the acts of the defendant states. Section 5 of Public Law 31 excepts from the operation of Section 3 (the quit-claim section) "all lands acquired by the United States . . . in a proprietary capacity." The Congress apparently proceeded on the assumption that the United States had "paramount rights" but not proprietary rights in the off-shore resources, and was unwilling to assume responsibility for giving away to the states lands acquired by the

3. The Standing of Rhode Island to Raise the Controversy.

This Court has never laid down any artificial or mechanical rule which would bar suits between states having a substantial conflict of right or interest and involving justiciable issues such as are presented here. As this Court recently said in *Georgia v. Pennsylvania R.R.*, 324 U.S. 439, 450, "The original jurisdiction of this Court is one of the mighty instruments which the framers of the Constitution provided so that adequate machinery might be available for the peaceful settlement of disputes between States and between a State and a citizen of another State. See *Missouri v. Illinois*, 180 U.S. 208, 219-224; *Virginia v. West Virginia*, 246 U.S. 565, 599. Trade barriers, recriminations, intense commercial rivalries had plagued the colonies. The traditional methods available to a sovereign for the settlement of disputes were diplomacy and war. Suit in this Court was provided as an alternative."

In an earlier case, *Missouri v. Illinois*, 180 U.S. 208, 240-241, Justice Shiras remarked:

"The cases cited show that such jurisdiction has been exercised in cases involving boundaries and jurisdiction over lands and their inhabitants, and in

federal government in a proprietary capacity. But it is our view that the paramount rights of the United States have been held by this Court to transcend but not to exclude proprietary rights, and that in fact the paramount rights of the United States embrace both sovereign and proprietary rights. This view is indeed taken by the present Attorney General of the United States in his brief on behalf of the individual defendants in opposition to Rhode Island's motion for leave to file complaint (Brief, p. 19 ff.). The statement seemingly to the contrary in Rhode Island's original brief, p. 26, was intended only to suggest that the off-shore resources were not the sort of property subject to disposition under Article IV, Section 3, clause 2 of the Constitution.

Since the United States has proprietary as well as sovereign rights in the off-shore lands, Public Law 31 is ineffective by its own terms to transfer the rights and interests of the United States therein. Such an interpretation of Public Law 31 would enable this Court to restrain the unlawful acts of the defendant states without the necessity of passing on the constitutionality of that law.

cases directly affecting the property rights and interests of a State. But such cases manifestly do not cover the entire field in which such controversies may arise and for which the Constitution has provided a remedy; and it would be objectionable, and, indeed, impossible, for the Court to anticipate by definition what controversies can and what cannot be brought within the original jurisdiction of this Court."

This Court has entertained suits between states based not only on claims arising under principles of the common law and principles of international law, but on rights arising under the Constitution (*Pennsylvania v. West Virginia*, 262 U.S. 552) and the laws of the United States (*Georgia v. Pennsylvania R. R.*, 324 U.S. 439).

As Mr. Justice Holmes stated in *Georgia v. Tennessee Copper Co.*, 206 U.S. 230, 237-8, "When the states by their union made the forcible abatement of outside nuisances impossible to each, they did not thereby agree to submit to whatever might be done. They did not renounce the possibility of making reasonable demands on the ground of their still remaining quasi-sovereign interests; and the alternative to force is a suit in this Court. *Missouri v. Illinois*, 180 U.S. 208, 241. * * * The States by entering the Union did not sink to the position of private owners, subject to one system of private law."

This Court has gone further and has held that a state can enforce as against a sister state rights under the Constitution which it did not have at common law or under the law of nations.

In *Pennsylvania v. West Virginia*, 262 U.S. 552, the states of Pennsylvania and Ohio were allowed to maintain suits against the state of West Virginia to restrain that state from withdrawing natural gas from established currents of commerce in order to give a preferred position to its own domestic users. The rights asserted by Pennsylvania and Ohio were not rights which they had at common law or under the law of nations. They were their

rights to share in the benefits of the attributes of national sovereignty over interstate commerce which all states had joined in conferring upon the federal government. As Justice Van Devanter said:

“By the Constitution, Art. 1 § 8, cl. 3, the power to regulate commerce is expressly committed to Congress and therefore impliedly forbidden to the States. The purpose of this is to protect commercial intercourse from invidious restraint, to prevent interference through conflicting or hostile state laws and to insure uniformity in regulation. It means that in the matter of interstate commerce we are a single nation—one and the same people. All the States have assented to it, all are alike bound by it and all are equally protected by it.”

Certainly Pennsylvania and Ohio would not have had less standing or interest to sue West Virginia if West Virginia had urged as a defense that her action was validated by an act of Congress, although as here the Court would then have been obliged to pass on the applicability and constitutionality of the Congressional enactment. (cf. *Kansas v. Colorado*, 206 U.S. 46).

As in *Pennsylvania v. West Virginia*, the complainant states base their rights against the defendant states on the Constitution of the United States. Under the Constitution, as this Court has held, the jurisdiction and control of the marginal seas and their resources are vested in the nation. At the time of the formation of the Union the three-mile limit had not yet been clearly established; some nations were contending for a much more extended limit and others were asserting that the open seas started at the ocean's edge. There has been and is now need and occasion, and in the future there will also be need and occasion, for the national government to maintain with vigor the three-mile limit or for particular purposes by treaty or practice to extend or contract that limit. Its power in this field of foreign relations and national

defense in the interests of all states must not be encumbered or embarrassed by the conflicting powers, interests or commitments of the several states. Rhode Island gave over control of its foreign policy and national defense to the national government, not to any of its sister states. Rhode Island has a right and interest to demand that other states desist from definite and specific acts in this field which are forbidden to them under the Constitution and which are harmful and hurtful to the economic and security interests of its people.

When the states enter or are admitted into the Union on an equal footing they agree that certain functions of government, particularly some of those most vital in the field of international policy and national defense, not only shall be vested in the federal government but shall not be exercised by the several states. Each state, both in its capacity as quasi-sovereign and as *parens patriae*, has a right to demand that its sister states observe these negative covenants so as to preserve the balance between the states in their relations with each other as well as between the states and the federal government.

States need not stand mute when the federal government fails to act to protect their basic rights under the Constitution. It is then appropriate for an injured state to seek the aid of this Court in making effective the principle that the Constitution "is above and beyond the power of Congress and the states, and is alike obligatory on both." *Gunn v. Barry*, 15 Wall. (82 U.S.) 610, 623.

The fact that the law officers of the federal government are prevented for the time being from defending the constitutional rights of the federal government because of an unconstitutional federal law is a reason for and not a reason against allowing Rhode Island to defend its rights under the Constitution. In *Pennsylvania v. West Virginia* the states were not obliged to wait for federal action to vindicate their rights under the commerce clause against sister states.

This Court can take notice that in the congressional debates and the minority reports on Public Law 31, the constitutionality of that enactment was most seriously questioned. Efforts of the State Department to have the bill amended so that it would not give the privileged states the right to derogate from the present and traditional foreign policy of the United States went unheeded (*Senate Hearings*, February 16-March 4, 1953, p. 1057 ff). Likewise unheeded were the efforts of the present Attorney General of the United States to have the bill amended to minimize constitutional questions by omitting language purporting to quit-claim and abdicate all interest of the United States and by inserting in lieu thereof language merely providing that the states should have the right to administer the resources. (*Senate Hearings*, February 16-March 4, 1953, p. 925 ff). The proponents of the legislation insisted on confirming alleged rights, both sovereign and proprietary, of the oil-rich coastal states which this Court had repeatedly held that they did not have. The defendant states are asserting these rights not as agents of the federal government or as trustees for the nation, but in their own interest and right and for their own profit. This Rhode Island as a quasi-sovereign state insists the defendant states have no right to do. Rhode Island asserts its rights under the Constitution not against the federal government but against the defendant states. It is questioning not the rights or actions of the United States, but the rights and actions of the defendant states.

And Rhode Island asserts its rights on behalf of itself as a sovereign state under the Constitution and on behalf of its citizens as *parens patriae*. The rights of Rhode Island and the rights of the citizens of Rhode Island which are sought to be vindicated in this case are substantially identical. Both the state and its citizens are constitutionally entitled to be protected against having their interests in vital segments of the external national sovereignty of the United States in national defense and

in foreign affairs infringed by the action of any other state. Such interests are more than an identifiable part of any physical assets or property. They are the very real interests of a state and its citizens in the preservation of the equal footing of states under the federal Constitution. The infringement of those interests may threaten the welfare of the state and its citizens far more than the impairment of many interests more localized or tangible in nature.

The decision in *Massachusetts v. Mellon*, 262 U.S. 449, is completely inapplicable here. *Massachusetts v. Mellon* involved no conflict between Massachusetts and any other state. Massachusetts did not contend that she had an interest different or other than that of any other state. All states had the right to share or reject the benefits of the Federal Maternity Act. Mr. Justice Sutherland could see no hurt to Massachusetts as a state as long as she was not obliged to operate under the Federal Act, and the Act imposed no more financial burden on Massachusetts citizens than it did on all other United States citizens. He was careful "not to go so far as to say that a state may never intervene by suit to protect its citizens from any form of enforcement of unconstitutional acts of Congress." 262 U.S. 447, 485. Cf. *Hopkins Savings Assn. v. Cleary*, 296 U.S. 315. He considered *Massachusetts v. Mellon* to raise only abstract questions of power between the federal government and the states not affecting any one state or group of states substantially different from the others. And indeed in *Florida v. Mellon*, 273 U.S. 12, Mr. Justice Sutherland did not deny leave to Florida to bring suit to enjoin the collection of the federal inheritance tax in Florida, on the ground that the federal law was not uniform and unconstitutionally discriminated against Florida, without first examining Florida's contentions and finding them in fact untenable on their merits.

While it is quite clear that the doctrine of *Massachusetts v. Mellon* has no bearing on a suit between states involving

a substantial conflict of right and interest, the doctrine has been subjected to important limitations even in its application to suits testing the rights of the federal government in its relations to the several states. In *Missouri v. Holland*, 252 U.S. 416, this Court recognized the standing of Missouri to contest, though unsuccessfully, the constitutionality of the Federal Migratory Bird Act on the alleged ground that it was an unconstitutional invasion of Missouri's right to control wild bird life within its own borders. And in *Hopkins Savings Association v. Cleary*, 296 U.S. 315, this Court recognized the right of the State of Wisconsin to contest, successfully, the constitutionality of provisions of the Federal Home Owners' Loan Act in a suit to restrain Wisconsin Savings Associations from becoming federal corporations as authorized by that Act. In distinguishing *Massachusetts v. Mellon*, Justice Cardozo said that ruling, "is nothing to the contrary, though it is made a cornerstone of the argument in favor of the statute . . . the ruling [there] was that it was no part of the duty or power of a state to enforce rights of citizens in respect of their relations to the federal government. Cf. *Florida v. Mellon*, 273 U.S. 12. Here, on the contrary, the state becomes a suitor to protect the interests of its citizens against the unlawful acts of corporations created by the state itself." If a state may sue to protect the interests of its citizens against acts of local corporations unlawfully committed under the color of federal law, it certainly should be able to sue to protect the interests of its citizens against acts of other states unlawfully committed under the color of federal law. Its citizens are much better able to defend their own interests against the unlawful acts of local savings associations than they are against the unlawful acts of other states.

In the instant cases in contrast to *Massachusetts v. Mellon*, there is a marked difference and substantial conflict of right and interest justiciable in character among the several states that are parties to these proceedings.

The defendant states, for their own profit, and in derogation of the rights of other states under the Constitution, are claiming the right to retain, develop, and control national resources, over which the federal government and the federal government alone has paramount authority and dominion.

The interests of the complainant states and their citizens are more than the interests of federal taxpayers. And they are more than the interests of the general public in the proper functioning of the federal system. The interests here spring from the complainants' rights to have the marginal seas and resources controlled, safeguarded, conserved and developed by the national government for the benefit of all the states. Such functions cannot be performed by any one of the states for its own particular purpose and profit to the disadvantage of the other states entitled to share thereon on an equal footing. The Constitution necessarily guarantees each state and its citizens the advantages of a single national policy—not 48 different policies—on matters vitally connected with foreign affairs and national defense. That guarantee is being violated by the defendant states, to the injury of Rhode Island and Alabama and their citizens.

The suits here present a controversy not with the federal government but between states. The issues involved are not abstract or hypothetical but real and pressing. They involve substantial conflict of right and of interest. It is the function of this Court under the Constitution to provide a forum for their peaceful solution. It would be unfortunate for all concerned if the development of these great resources should be plagued by clouded titles and overhanging claims until sometime in the future Congress reverses itself or modifies itself or a private litigant finds it advantageous to raise these issues in some collateral and relatively unimportant private law suit.

In the words of Justice Cardozo, "Given the encroachment, the standing of the state to seek redress as suitor is not to be gainsaid, unless protest without action is the only method of resistance. Analogy combines with reason in telling us that this is not the law." *Hopkins Savings Assn. v. Cleary*, 296 U.S. 315, 339.

4. The Appropriateness of Relief at This Time.

Whenever there have been real and substantial conflicts of right and interest between states involving issues of a justiciable character, this Court has never been niggardly in allowing the processes of this Court to be used for their peaceful and orderly adjudication and settlement. The defendant states are proceeding to develop for their own benefit and profit the resources of the marginal seas in which this Court has held the federal government had paramount rights and full dominion and the defendant states had no title or property interest. Obviously this situation in fact is one in which there is a substantial conflict of right and interest between the "have" and "have not" states, between the privileged and non-privileged states. The issues here are no more political than were the issues in the earlier off-shore oil cases. They are substantially the same issues and are equally justiciable whether they arise between the states or between the states and the federal government.

Throughout the defendants' briefs it is argued that this Court should refrain from exercising its jurisdiction because the legal issues have political aspects and repercussions. But political implications are involved in all great constitutional issues. When constitutional issues are justiciable in character and are practically susceptible of judicial solution, the mere presence of political overtones should not deter the exercise of jurisdiction. There are urgent and compelling reasons why this Court should not hesitate to exercise such jurisdiction as it has in these suits. Great interests, public and private, are involved in

the development of these resources. Clouded titles and overhanging claims are bound to plague and obstruct the prudent and economic development of these resources. Whatever difference there may be on the substantive issues involved in these suits, it is to the clear interest of all parties that they be resolved and not held in abeyance. It would in fact be in the clear interest of the defendants to join with the complainants in asking this Court to consider these suits and decide them on the merits.

The rejection of these suits without an adjudication on the merits will not protect the defendant states or the companies which accept leases from them, nor will such rejection bar by the doctrine of *stare decisis* the assertion of the rights of the federal government, the several states or private litigants next year or five or ten years hence.

In *Illinois Central RR. v. Illinois*, 146 U.S. 387; this Court had to consider a very similar situation. In 1869 the legislature of Illinois had sought to surrender the submerged lands in Lake Michigan under the Chicago harbor to the Illinois Central RR. Four years later the legislature repealed the law which had purported to surrender these lands. Twenty years later, after much litigation and confusion, this Court held that the Illinois Central had acquired no interest in the submerged lands because this Court refused to recognize a doctrine "which would sanction the abdication of the general control of the state over lands under the navigable waters of an entire harbor or bay or sea or lake. Such abdication is not consistent with the exercise of that trust which requires the government of the state to preserve such waters for the use of the public. The trust devolving upon the state for the public, and which can only be discharged by the management and control of property in which the public has an interest, cannot be relinquished by the transfer of the property." (146 U.S. 387, 452-453)

It is possible, indeed it is likely, that some future Congress will again reassert the paramount rights of the

federal government in the national resources under our marginal seas. Certainly, with political changes, the Congress would have no less scruples in reversing and nullifying the action of a prior Congress than the present Congress had in attempting to reverse and nullify the decisions of this Court. Any such new legislation would necessarily be premised on congressional belief that Public Law 31 was unconstitutional and without binding effect on future congressional action. And if the Congress does again reassert the paramount rights of the federal government, there can be no question that if the Attorney General should bring suit in this Court against the defendant states and their lessees, this Court would be bound by its earlier decisions to consider and resolve all the substantive issues which are raised by the present suits.

There is nothing in the decisions of this Court or in the equities of the situation which should bar the entertainment of these suits now.

5. The United States Is Not an Indispensable Party.

The arguments advanced by the defendants that these are suits against the United States or that the United States is an indispensable party are clearly without merit.

The suits are not in form or in substance against the United States. They are against the defendant states and against certain individual defendants who are co-operating in their unlawful actions under the color of authority of an unconstitutional statute. The relief sought in no way entails interference with governmental property or brings the operation of governmental machinery into play. The complainants do not seek to divest the United States of any property or to interfere in any way with the proper functions of government.

The fact that the defendant federal officers are threatening to act under an unconstitutional statute makes inapplicable the doctrine of sovereign immunity. There was no dissent from the statement of this Court in the recent case of *Larson v. Domestic and Foreign Corporation*, 337 U.S. 682, 690, that a suit against an officer is not a suit against the United States where "the conduct against which specific relief is sought is beyond the officer's powers" under the Constitution. Since Rhode Island and Alabama expressly seek that type of relief, the United States is not an essential party and its consent to be sued is unnecessary.

CONCLUSION

The complainant states are not complaining that the United States is developing the resources of the marginal seas in violation of the complainant states' rights under the Constitution. They are complaining that the defendant states are developing those resources for their own profit in violation of the complainant states' rights under the Constitution. They do not deny the right of the defendant states to interpose as a defense the contention that the Congress has sought to abdicate the paramount rights of the United States which are held in trust for all the states, but they do maintain their own right to show in this Court that under the Constitution Congress had no authority to surrender these essential attributes of national sovereignty to the detriment of the non-privileged states.

In closing, Rhode Island prays that this Court allow it leave to file its complaint against the defendants. There is a real and genuine controversy here involving justiciable rights of transcending importance and value. In the interest of all parties, the complaints of the complainant states should be received and after full hearing decided

on their merits in accordance with law which embraces the
Constitution as the supreme law of the land.

Respectfully submitted, •

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